

- “Methine and azomethine species” of formulae (VI), (VII), and (VIII)
- “Thiazine species” of formula (IX); and
- “Phenazine species” of formulae (X), (XI)¹, (XII), and (XIII).

Applicants provisionally elect, with traverse, to prosecute the arymethane species of formulae (I), (II), (III), and (IV), corresponding to claims 1-15 and 24-41.

Regarding Applicant's traverse of the restriction requirement, MPEP § 803 sets forth the two criteria for a proper requirement for restriction: (1) the inventions are independent or distinct as claimed, and (2) there is a serious burden on the Examiner. Applicants submit that the Office has failed to show that a serious burden exists to examine all of the alleged species. The Office has provided no reasons or evidence on the record to substantiate the election of species requirement, let alone how examination of all the species would impose a serious burden.

If the Office chooses to maintain the election of species requirement, Applicants understand that, if the elected species is found allowable, the Office will continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a “reasonable” number of the non-elected species. MPEP § 803.02 and 35 U.S.C. § 121.

For the reasons stated above, Applicants respectfully traverse the Restriction Requirement and request that it be withdrawn such that pending claims 1-41 be examined during the prosecution of this application. Applicants further reserve the right

¹ While the Office Action states that the phenazine species is comprised of formulae “(X), (IX), (XII) and (XIII),” Office Action at 2, it is applicant's belief that this is an inadvertent typo on the part of the Office and that the Office intended to indicate “(X), (XI), (XII) and (XIII).”

to present any additional arguments regarding the restriction of the subject matter in the pending claims at any time later in this application or in any divisional or continuation applications.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 31, 2006

By: Evin C DeCarlo,
Reg. No. 51,688 for
Thalia V. Warnement
Reg. No. 39,064